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## REEMPLOYMENT AFTER MILITARY LEAVE

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We thought this would be a good time to review requirements for a participant who has been on military duty. In general, reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") apply if the following criteria are satisfied:

- The employer had advance notice that the employee was terminating employment to enter military service.
- The employee had five years or less of military leave from the current employer.
- The employee submits an application for reemployment (written or verbal) no later than 90 days after the completion of military service. (Period for filing an application is shorter if period of military service was less than six months.)
- Discharge from the military was honorable.

If you have an employee who is returning from military service who does not meet these general requirements, you will want to contact the company's attorney to see if any exceptions apply.

Retirement plans maintained by all employers, including government and church employers, are subject to the USERRA rules. If you determine that the former employee is entitled to reemployment under USERRA, then certain safeguards apply to retirement plan coverage. The following is a summary of the steps that you should take after the veteran is reemployed.

### Defined Benefit Plans

- In the first census request after the participant is reemployed, report to us the date the military leave began, the date of reemployment, and the annual pay\* the employee would have received if he or she had remained employed during the period of military leave. The plan will credit the participant with hours while on military leave for purposes of both vesting service and benefit service (except that benefit service will not be credited if the plan requires mandatory employee contributions and those are not made up).
- If the plan has mandatory employee contributions, notify the participant that he or she has a right to make up the missed contributions and that if missed contributions are not made up, the employee will not receive credit for benefit service that would have been earned during the period of military leave.\*\*
- If the plan has after-tax employee contributions, notify the participant that he or she may repay any after-tax employee contributions withdrawn prior to reemployment.\*\*\*

### Defined Contribution Plans (including 403(b) plans and 457 plans)

- In the first census request after the participant is reemployed, report to us the date the military leave began, the date of reemployment, and the annual pay\* the employee would have received if he or she had remained employed during the period of military leave. The plan must credit the participant with hours while on military leave for purposes of vesting service.
- If the plan has elective deferrals, give the participant a notice that he or she has an opportunity to make up the elective deferrals and that if the elective deferrals are made up, any match that would have been made during the period of military leave will be contributed by the employer.\*\*
- If the plan made a profit sharing contribution during the participant's military leave, compute the missed contribution based on the pay\* the participant would have received and make it to the plan within 30 days after the participant's date of reemployment. If it is unreasonable to make the contribution within 30 days, the employer must make it as soon as practicable.
- Notify the participant that if he or she withdrew all or part of their account balance prior to reemployment, repayment may be made.\*\*\*
- If the reemployed participant received a plan loan prior to military service, interest in excess of 6% during the period of military service must be forgiven, unless the participant waives, in writing, his right to the 6% cap. (In determining the 6% interest, fees associated with the loan are included. See our May 31, 2004, newsletter for additional discussion.) If your loan rules permit suspension of payments during a leave and the participant suspended his or her loan payments during military service, a new amortization schedule will need to be prepared extending the loan for the period of suspension.

\* The pay must include any pay increases, differentials, step increases, merit increases, or periodic increases that the employee would have received with reasonable certainty had he or she remained continuously employed during the period of military service. If the rate of pay the participant would have received is not reasonably certain (e.g., compensation is based on commissions), the average rate of compensation during the 12 month period prior to military service should be used.

\*\* The participant has a period of time (not to exceed 5 years) starting with the date of reemployment and continuing for up to three times the length of immediate past military service to make up contributions.

\*\*\* The participant has a period of time (not to exceed 5 years or a later period agreed to by the employer) to repay any withdrawals made prior to reemployment. The amount repaid to a defined benefit plan (but not a defined contribution plan) must include interest that would have accrued had the funds not been withdrawn.

For more information on USERRA, visit the Department of Labor's website, [www.dol.gov/vets](http://www.dol.gov/vets).